

7. (Amended) A laminar assembly comprised of:

a backing with an exterior surface;

a plurality of textile tufts embedded in the backing; and

a layer of a polymeric material overlying at least part of the exterior surface of the

5 backing with polymeric material disposed in the textile tufts and voids between textile tufts wherein the laminar assembly is permeable and has a permeability of 500 rayls ($\text{N}\cdot\text{s}/\text{m}^3$) or less.

A marked-up copy of the claim amendments set forth above, is attached to this Amendment.

REMARKS

Introduction

Claims 7-15 are currently pending in this application and stand rejected over the prior art. The word "and" is added by this Amendment to claim 7 for ease of reading. In addition, claim 7 has been amended to further specify that the claimed laminar assembly is permeable, further supporting the scope of the claimed range of permeability. No new matter is added to the application by this Amendment.

Prior Art Rejections

The Examiner rejected claims 9, 13, and 14 as anticipated by Sorrells and Tillotson. Applicants respectfully traverse the Examiner's rejections.

Claims 9 and 13 recite polymeric material that is "disposed in" textile tufts. As explained in the specification, heating of a carpet laminate causes wicking of the polymeric layer 14 into the primary backing 10 and tufts 12 (the textile tufts), which results in the

polymeric layer being disposed in the textile tufts and voids between tufts 14 (see page 7, lines 1-6). Neither Sorrells nor Tillotson anticipates this claim limitation because neither teaches or suggests a polymeric material that is disposed in the textile tufts. Sorrells teaches an adhesive layer 18 that bonds a secondary backing 16 to a primary backing 14, pile yarn 12, and stitch projections 20 (see Sorrells col. 2, lines 50-53), but does not teach or suggest disposing adhesive layer 18 in primary backing 14, pile yarn 12, or stitch projections 20. Similarly, Tillotson does not teach or suggest disposing an adhesive in the carpet 12 or the secondary backing 52. Moreover, neither Sorrells nor Tillotson teaches or suggests a product with the adhesive material wicked into the tufts or primary backing. Therefore, neither Sorrells nor Tillotson anticipates claims 9 or 13.

Claim 9 recites “a laminated vehicle sound insulating carpet panel.” Applicants respectfully submit that Sorrells or Tillotson does not anticipate claim 9, because neither teaches or suggests a vehicle carpet product, nor do they render it obvious. In view of the foregoing, applicants respectfully submit that claims 9 and 13 are allowable over the prior art currently of record. Claims 10-12 and 14-15 depend from claims 9 and 13 respectively, and therefore, are also allowable.

The Examiner also rejected claims 7-8, 10-12, and 15 as anticipated by, or obvious over, Sorrells or Tillotson. The Examiner asserts that “it is reasonable to assume” the claimed permeability is inherent in Sorrells and Tillotson. Applicants respectfully traverse the Examiner’s rejection.

Claim 7 recites polymeric material that is “disposed in” textile tufts. As discussed above with respect to claims 9 and 13, this limitation patentably defines over Sorrell and Tillotson. Thus, applicants respectfully submit that claim 7 is allowable over the prior art currently of record. Claims 8, 10-12, and 15 depend from claims 7, 9, and 13 respectively

and are also believed allowable for the reasons set forth above. For the reasons set forth below, applicants respectfully submit that claims 7-8, 10-12, and 15 further patentably define over Sorrells and Tillotson.

With respect to Tillotson, there is no teaching or suggestion that the laminated carpet structure 62 is permeable. The Examiner presumes that Tillotson's laminated carpet structure 62 is permeable because the adhesive composition used to bond the carpet 12 to the secondary backing 52 is "discontinuous". The Examiner also asserts that Tillotson applies the adhesive in this manner "to provide a breathable carpet" (see Office Action dated 5/22/01, p. 4, ¶ 7). The Examiner's presumption is in error because it presumes that both the carpet 12 and secondary backing 52 are permeable, which is not disclosed anywhere in Tillotson. Moreover, contrary to the Examiner's assertion, Tillotson teaches providing a discontinuous adhesive layer for the purpose of using less adhesive. (see Tillotson, col. 1, lines 61-65; col. 2, lines 49-54). Tillotson does not teach or suggest the desirability of providing a breathable carpet, as suggested by the Examiner. The Examiner's assertion that the laminated carpet structure taught in Tillotson is permeable is merely speculation, which is insufficient to establish inherency. See In re Rijckart, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); In re Oerlich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981); M.P.E.P. §2112. Thus, applicants respectfully submit that the permeability range claimed in claim 7 patentably defines over Tillotson.

With respect to Sorrells, applicants acknowledge that the tufted pile fabric 10 is permeable. However, applicants disagree with the Examiner's assertion that it would be "reasonable to presume" that Sorrells' fabric would have a permeability of "500 rayls ($\text{N}\cdot\text{s}/\text{m}^3$) or less", as claimed in claims 7, 10 and 15. To the contrary, the permeability of Sorrell's fabric 10 would likely not be similar to that of the claimed invention because it is

rendered permeable by a different process and for different purpose than the present invention. Sorrell's fabric 10 is rendered permeable by mechanically piercing the fabric 10 with tufting needles for the purpose of allowing evaporation of a water based adhesive used to install the fabric 10 (see Sorrells, col. 2, lines 34-59). The degree of permeability required to enable water evaporation would likely be much greater than 500 rayls. Thus, the Examiner's inherency rejection based on Sorrells is defective, because there is no basis in fact and/or technical reasoning to support the Examiner's assertion that a permeability of 500 rayls or less is inherent in Sorrells' fabric 10. See Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). The Examiner's assertion is, at best, mere speculation. Again, such speculation is not sufficient to establish inherency. See In re Rijckart, 28 USPQ2d at 1957; In re Oerlich, 212 USPQ at 326; M.P.E.P. §2112. Thus, applicants respectfully submit that the claimed permeability range of claim 7 is not anticipated by Sorrells.

Applicants respectfully traverse the Examiner's assertion that the claimed permeability range is obvious in view of the prior art of record. In order to be obvious in view of the prior art, a claimed parameter must be recognized to achieve a recognized result. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980); M.P.E.P. §2144.05 (II)(A)(B). As discussed in the specification, the claimed permeability is critical to the sound attenuation properties of the present invention (see p. 2, lines 5-12; p.3, lines 5-8). Neither Sorrells nor Tillotson recognize that making a fabric permeable (much less within the claimed range) would improve its sound attenuation properties. Therefore, applicants respectfully submit that the claimed permeability range of claims 7, 10, and 15 is not obvious over Sorrells or Tillotson.

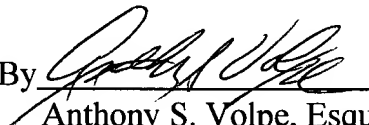
Applicant: Price, et al.
Application No.: 09/266,155

In view of the foregoing, applicants respectfully submit that the permeability range claimed in claims 7, 10, and 15 further patentably define over Sorrells and Tillotson. Claims 8 and 11-12 depend from claims 7 and 10 respectively, and therefore, also further patentably define over Sorrells and Tillotson. Applicants respectfully request reconsideration of the application, withdrawal of the rejections of claims 7-15, and a Notice of Allowance for claims 7-15.

If the Examiner believes an interview, personally or telephonically, would materially advance the prosecution of this application, it is respectfully requested that she get in contact with the undersigned.

Respectfully submitted,

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Enclosure



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Application No.: 09/266,155

**37 CFR §1.121(b)(1)(iii) and (c)(1)(ii) SPECIFICATION
AND CLAIM AMENDMENTS- MARKED UP VERSION**

7. (Amended) A laminar assembly comprised of:
a backing with an exterior surface;
a plurality of textile tufts embedded in the backing; and
a layer of a polymeric material overlying at least part of the exterior surface of the
backing with polymeric material disposed in the textile tufts and voids between textile
tufts wherein the laminar assembly is permeable and has a permeability of 500 rayls
(N·s/m³) or less.

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